



1 Education and Workforce Development Cabinet

2 Kentucky Board of Education

3 Department of Education

4 (Amended After Comments)

5 704 KAR 19:002. Alternative education programs.

6 RELATES TO: KRS 156.070, 156.160, 160.380

7 STATUTORY AUTHORITY: KRS 156.160, 156.070

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 grants the Kentucky Board of

9 Education the authority over the management and control of programs operated in the common

10 schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to

11 promulgate administrative regulations establishing standards which school districts shall meet in

12 program service to students. This administrative regulation establishes minimum requirements

13 for the operation of alternative education programs in school districts.

14 Section 1. Definitions. (1) "Alternative education program" is defined by KRS 160.380.

15 (2) "Individual education program" or "IEP" is defined by 707 KAR 1:002.

16 (3) "Individual learning plan" or "ILP" means a comprehensive framework for advising students

17 in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare

18 them to both realize college and career success and become contributing members of their

19 communities.

20 (4) "Individual learning plan addendum" or "ILPA" means an action plan that addresses the

21 changed educational needs of a student based upon entry into or exit from an alternative

education program that includes, as appropriate, academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(5) "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel to ensure the safety of the individual student, the student body, or staff; to meet the educational needs of the student; to transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or for disciplinary purposes.

(6) "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within the student's assigned school.

(7) "On-site program" means an alternative education program located within the student's assigned school.

(8) "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

Section 2. General Requirements. (1) Districts shall ensure that alternative education programs are aligned with college and career readiness outcomes for all students. Districts shall ~~[strive to]~~ ensure that alternative education programs are not limited in scope or design, to include best practices in training of staff and administrators for delivering services and programming to guide all students to college and career readiness ~~[to one (1) type of program offering to students]~~. Students enrolled in alternative education programs may be eligible to participate in one (1) or more types of programs to address student learning needs that may include alternative digital learning environments, credit recovery, and innovative paths to graduation.

1 (2) Local boards of education shall **adopt and annually review** ~~[review and adopt]~~ policies and
2 procedures ~~[as necessary]~~ for the operation of alternative education programs within the district.
3 Locally-adopted policies and procedures shall include:
4 (a) Purpose of the program, including the ways the program supports the district's college and
5 career readiness goals for students;
6 (b) Eligibility criteria, as appropriate;
7 (c) Process for entering students into the program;
8 (d) Process for transitioning students out of the program;
9 (e) Composition of the team to develop the ILPA, which shall include an invitation to the parents
10 to participate and, as appropriate, an invitation to the student to participate; and
11 (f) Procedures for collaboration with outside agencies involved with involuntary placements,
12 including courts or other social service agencies to address student transitions between programs.
13 (3) Alternative education programs may be either on-site programs at the student's assigned
14 school or off-site programs located in a separate facility.
15 (4) Alternative education program curriculum shall be aligned with the Kentucky Core Academic
16 Standards in 704 KAR 3:303, and the student learning goals in the ILP.
17 (5) Alternative education program students shall be subject to the minimum graduation
18 requirements in 704 KAR 3:305 and any additional local district graduation requirements.
19 (6) Alternative education programs shall be subject to any applicable requirements of 703 KAR
20 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver, or its
21 successor.
22 (7) Students participating in alternative education programs shall be eligible to access
23 extracurricular activities as allowed by local district and school council policies and by 702 KAR

1 7:065 or other applicable organization rules.

2 (8) Students participating in alternative education programs shall continue to be able to access
3 resources and services already available in the district, such as instructional materials, tutoring,
4 intervention, and counseling services, in furtherance of each ~~the~~ student's educational program
5 as determined through the development of the ILPA.

6 Section 3. Placement of Students. (1) The placement of students by the district in alternative
7 education programs may be either voluntary or involuntary. Students entering alternative
8 education programs shall meet the eligibility requirements for the program established by the
9 local board pursuant to Section 2 of this administrative regulation. The district shall ensure that
10 an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative
11 education program.

12 (2) The placement decision for all students with an IEP shall be made through the admissions
13 and release committee (ARC) process pursuant to 707 KAR 1:320. For a child with a disability,
14 as defined by 707 KAR 1:002, Section 1(9), the IEP shall address the changed educational
15 delivery needs of the student based upon entry into or exit from an alternative education
16 program. The placement decisions for students that have been identified under 29 U.S.C. §794,
17 Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process
18 consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

19 Section 4. Costs and Expenditures. Districts shall use the statewide financial management system
20 and chart of accounts to track costs and expenditures associated with each alternative education
21 program operating in the district.

22 Section 5. Data. Districts shall utilize the student information system to enter data regarding
23 students enrolled in alternative education programs. Data collected shall include demographic,

1 programmatic or other data fields contained in the student information system or required by the
2 department to track and report student participation, educational programming, achievement, and
3 transition to and from alternative education programs.

4 Section 6. Personnel. Alternative education program teachers and administrators shall be subject
5 to the teacher certification requirements in KRS 161.020, and shall comply with the classified
6 and certified assignment restrictions outlined in KRS 160.380(3).

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

12-14-12
Date

Terry Holliday
Terry Holliday, Ph.D.
Commissioner of Education

12-14-12
Date

David Karem
David Karem, Chair
Kentucky Board of Education

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 704 KAR 19:002

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements for operating alternative education programs in local school districts.

(b) The necessity of this administrative regulation: KRS 156.160 grants the Kentucky Board of Education (KBE) the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. This administrative regulation establishes minimum requirements for alternative school programs. Kentucky's approved waiver from the Elementary and Secondary Education Act (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Approval of the waiver was conditioned upon the implementation of these elements.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes minimum standards for alternative education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific guidance to local school districts about general program requirements, student placement, staff certification, and data collection.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public schools and school districts in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed administrative regulation will require alternative programs to be aligned with college and career readiness outcomes, Kentucky's core academic standards, and graduation requirements. Districts that do not have policies and procedures to govern these

programs will be required to develop them, and parents will be invited to participate in developing an ILPA to address program changes that will occur as a result of a change in placement. Data on types of programs, program costs, and student participation will be collected.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts that do not have policies and procedures governing alternative education will be required to develop them. For students not already required to have parent involvement in the planning process, including the development of a plan, a process will need to be developed. Additional program and student data collection will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The agency will work with the Kentucky School Boards Association (KSBA) to develop model policies. As many students identified under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Required data will be electronically collected through the existing statewide student information system (Infinite Campus) and financial management system and chart of accounts (MUNIS).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More students in alternative school settings will graduate college and career ready. Districts will have better information on the cost and effectiveness of programs to make better placement decisions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The administrative regulation will require agency staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in this administrative regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(b) On a continuing basis: The administrative regulation will require agency staff time to assist districts with implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds and local district general funds as may be required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new

fees are required by this administrative regulation. The provisions of this administrative regulation may be implemented without additional funds at this time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 19:002
Contact Person: Kevin C. Brown
Phone Number: 564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 20 U.S.C. secs. 6301, et seq., U.S. Department of Education (USDE) Elementary and Secondary Education Act approved waiver issued pursuant to 20 U.S.C. 7861.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For the agency, the administrative regulation will require staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in this administrative regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system. Additional financial expenditures that may be needed for implementation are not known at this time.

For local school districts, it is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The agency will work with the Kentucky School Boards Association to develop model policies. As many students identified under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Required data will be electronically collected through existing statewide systems.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There is little, if any, anticipated additional cost to the agency, as responsibilities and costs will be apportioned to

existing staff and fiscal resources. It is expected that local school district costs will be minimal, as the administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, and with minimal burden to local school districts.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that responsibilities and costs can continue to be apportioned among existing resources at both the state and local levels.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Kentucky's approved waiver from the Elementary and Secondary Education Act (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Subsequent to a review of Kentucky's initial application, the United States Department of Education (USED) required the agency to include additional activities designed to support and engage English language learners, students with disabilities, and other disenfranchised students, which was accomplished by adding the ILPA process and other supports. Approval of the waiver was conditioned upon the inclusion of these elements. The administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, and with minimal burden to local school districts.

STATEMENT OF CONSIDERATION
Relating to 704 KAR 19:002
Alternative education programs

Kentucky Department of Education

Amended After Comments

(1) The public hearing on 704 KAR 19:002 scheduled for November 26, 2012 at 1:00 p.m. in the State Board Room, Kentucky Department of Education (KDE) was canceled; however, written comments were received during the public comment period.

(2) The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tara Grieshop-Goodwin, Deputy Director	Kentucky Youth Advocates (KYA)
Kathy Adams, Director of Public Policy	Children's Alliance (CA)
Rebecca Ballard DiLoreto, Litigation Director	Children's Law Center (CLC)

(3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

<u>Name and Title</u>
Kevin C. Brown, Associate Commissioner and General Counsel
David Wickersham, Assistant General Counsel
Susan Allred, Associate Commissioner
Sherri Clusky, Program Consultant
Debbie Hendricks, Policy Advisor

(1) Subject Matter: Improvement of the quality of education in Kentucky's alternative education programs

(a) Comment: Ms. DiLoreto of CLC stated that the regulations represent a significant advancement on behalf of students and families. She noted the proposed regulations accomplish a number of important steps in that they: differentiate between voluntary and involuntary programs; give more definition to the types of alternative programs; include provisions for collecting data on the student population; track more complete information to ensure fiscal accountability; require policies covering entry and exit procedures; require participation in extracurricular activities; require curriculum alignment with agency standards; and include parents as a part of the planning meetings involved with placement. The changes will improve the educational experience for students participating in these programs.

(b) Response: No changes have been made. The agency concurs with the positive comments.

(2) Subject Matter: Development and monitoring of Individual Learning Plan Addendum (ILPA)

- (a) Comment: Ms. Grieshop-Goodwin of KYA stated that the requirement for the development of an ILPA was a positive addition to alternative education programs. The commenter encouraged the agency to add provisions for rigorously monitoring the quality of the ILPAs to ensure they serve their intended purpose.
- (b) Response: No change has been made. The agency concurs with the comment that development of an ILPA will be a beneficial step for students in these programs, but regrets that at this time, no funding is available to support the type of rigorous monitoring of ILPA quality requested. The agency is promulgating this regulation to begin collection of more detailed baseline data on these programs, but realizes that this regulation will not be able to address immediately all stakeholder concerns. Agency monitoring will occur through collection and public reporting of data, which will be analyzed and used to guide future direction of work in this program area.

(3) Subject Matter: Program offerings

- (a) Comment: Ms. Grieshop-Goodwin of KYA requested that language be changed in Section 2 (2) of the regulation by deleting the words "strive to" to assure that more than one type of program is available to serve eligible students.
- (b) Response: Changes have been made in response to this comment. The agency has revised the proposed regulation as requested and provided additional language to clarify the intent of the regulation. The regulatory language was an attempt to make sure that students who may need services other than a traditional six-hour day have access to various high-quality program alternatives in order to meet their needs. Revised language will serve to clarify this issue.

(4) Subject Matter: Local policies and procedures

- (a) Comment: Ms. Griesop-Goodwin of KYA requested that the phrase "as necessary" be deleted from Section 2 (2) and the term "annually" be inserted to require annual review of policies and procedures.
- (b) Response: Changes have been made in response to this comment. The agency has revised the proposed regulation to clarify that policies will be developed initially and reviewed annually to determine needed changes, rather than being reviewed on an "as needed" basis.

(5) Subject Matter: Data

- (a) Comment: Ms. Griesop-Goodwin of KYA requested that the agency ensure that data collected will provide information on program entrance and exit dates and voluntary versus involuntary placements, and that data will be capable of being linked to information on school disciplinary actions such as suspension and expulsions.
- (b) Response: A change has been made in response to this comment. Rather than specify discrete items of data in the regulation, the agency has written Section 5 of the regulation broadly to assure the ability to collect the variety of data that may be necessary to draw conclusions and to identify future program needs. Revised language will serve to clarify this intent. Entrance and exit dates and voluntary or

involuntary placements are currently being planned for collection, as are linkages with disciplinary data.

(6) Subject Matter: Insufficiency of public funding for host facilities of residential programs for state agency children

- (a) Comment: Ms. Adams of CA expressed concerns about the insufficiency of public funding for education costs incurred by host facilities of residential programs for state agency children. The commenter stated that school districts housing these programs should not be financially responsible for educational costs of a student coming from a different part of the state, education dollars should not be used to fund costs that should be the responsibility of the Cabinet for Health and Family Services, and funding received by the facility for non-education purposes should not have to be used to supplement educational expenses.
- (b) Response: No change has been made in response to this comment. This regulation relates to collection and tracking of data and information on district-operated alternative school programs, not programs for state agency children. Issues regarding funding of state agency children programs are beyond the scope of this regulation, and statutory revision may be necessary to address the commenter's concern.

(7) Subject Matter: Fiscal Accountability

- (a) Comment: Ms. Griesop-Goodwin of KYA acknowledged the steps the proposed regulation takes to ensure appropriate financial data is collected for each alternative education program operating within school districts. The commenter asked that special attention be given to dedicated and categorical dollars and that information be collected on educational costs assumed by state agency programs. The commenter recommended the following language be added to Section 4:

"Districts shall track the educational costs and expenditures incurred by the program facility of A6 Programs serving children in state agency care offered off-site. Districts shall also track the distribution of dedicated and categorical funding to alternative education programs to ensure such programs have adequate resources to match the needs of their student population."

Ms. Adams of CA also requested that Section 4 be amended to require districts to collect data from the host agencies of state agency children programs so that their legitimate school-related costs and expenditures will also be tracked.

- (b) Response: No change has been made in response to these comments. Regarding a requirement that districts track the distribution of dedicated and categorical funds, the administrative regulation contains a requirement that districts use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative program operating in the district. The expectation is that the higher-level data that is initially collected pursuant to the administrative regulation will be analyzed to determine the more in-depth, specific data requirements that will be necessary to provide the complete picture regarding funding of alternative programs.

The commenters appear to request that the administrative regulation require local school districts to track the educational costs and expenditures incurred by the state agency residential program in which the students are placed. Requests related to state agency residential programs are outside the scope of this administrative regulation, which addresses district alternative programs. Further, it is the position of the agency that it lacks authority to require school districts to track expenditures of a non-district owned program. The school district has no control over these expenditures to determine if they are appropriate or needed. Asking districts to establish such a mechanism, then track and report these expenditures, would impose an undue burden. Additionally, the school district does not approve these expenditures, yet would be asked to report them as if they were under district control.

(8) Subject Matter: Teacher Quality

- (a) Comment: Ms. Grieshop-Goodwin of KYA supports the inclusion of language to ensure teachers and administrators assigned to alternative education programs comply with appropriate statutes regarding certification. The commenter requested the inclusion of language encouraging the application of best practices in professional development for teachers and administrators who work in alternative education programs.
- (b) Response: No change has been made in response to this comment. The agency is currently designing best-practice professional development for alternative program staff, including training on use of the ILPA, for delivery across the state.

Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

The agency received several comments in support of the regulation, indicating that the administrative regulation accomplished important steps to improve programs for alternative school students, including the requirement for an ILPA.

Two commenters requested seven changes to the administrative regulation. The agency made two revisions as a result of those comments, and two requests were determined to be outside the scope of this regulation. The three remaining requests can be accommodated without making changes in the regulation.

One commenter requested addition of provisions for rigorous monitoring, which the agency declined to include as it plans to monitor through collection and public reporting of program data. The same commenter requested changes in language to assure that more than one type of program offering is available. This was accomplished through the incorporation of clarifying language assuring that programs are not limited in scope or design. The commenter also requested that the administrative regulation be revised to require annual review of policies and procedures, and include specific data elements for collection. The agency revised the regulation to include annual review of policies and procedures, but declined to list specific data points to ensure the language was sufficiently broad to accommodate current and future data collection needs. The commenter requested that the regulation require tracking of dedicated and

categorical funding to alternative programs, and include language encouraging best practices in professional development. The agency declined to make the requested changes, as the regulation includes tracking of expenditures through the state's financial management system, and best practice professional development for alternative program staff is currently being designed by the agency.

Another commenter expressed concerns regarding the lack of public funding for host facilities for residential programs for state agency children, and both commenters requested that the regulation require school districts to track the educational costs and expenses of host agencies serving state agency children. The agency declined to make changes since these requests are outside the scope of this regulation, which addresses local school district alternative programs.

The agency proposes the following amendments after comments:

Page 2

Section 2(1)

Line 19

After "shall", delete the following:
strive to

Page 2

Section 2 (1)

Lines 20-21

After "limited", insert the following:
in scope or design, to include best practices in training of staff and administrators for delivering services and programming to guide all students to college and career readiness

Delete the following:
to one (1) type of program offering to students

Page 3

Section 2 (2)

Line 1

After "shall", insert the following:
adopt and annually review

Delete the following:
review and adopt

Page 3

Section 2 (2)

Line 1

After "procedures", delete the following:
as necessary

Page 4

Section 2 (8)

Line 6

After “of”, insert the following:

each

Delete the following:

the

Page 5

Section 5

Line 3

After “system”, insert the following:

or